

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;  
Mark Acton, Vice Chairman; and  
Robert G. Taub

Competitive Product Prices  
Bilateral Agreement Between United States Postal Service  
and Posten Norge AS (MC2010-34)  
Negotiated Service Agreement

Docket No. CP2014-35

ORDER APPROVING ADDITIONAL INBOUND COMPETITIVE  
MULTI-SERVICE AGREEMENT WITH FOREIGN POSTAL OPERATORS 1  
NEGOTIATED SERVICE AGREEMENT (WITH NORWAY POST)

(Issued March 25, 2014)

I. INTRODUCTION

The Postal Service seeks inclusion of the inbound portion of a bilateral agreement with Norway Post (2014 Agreement) within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 (MC2010-34) (Foreign Postal Operators 1) product.<sup>1</sup> For the reasons discussed below, the Commission approves the request.

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<sup>1</sup> United States Postal Service Notice of Filing Functionally Equivalent Inbound Competitive Multi-Service Agreement with Norway Post, March 13, 2014 (Notice). The Postal Service refers to the 2014 Agreement as Modification Two. *Id.* at 1.

## II. BACKGROUND

*Product history.* In Order No. 546, the Commission approved the addition of the Foreign Postal Operators 1 product to the competitive product list, and contemporaneously included an agreement within the new product.<sup>2</sup> Since then, the Postal Service has requested, and the Commission has approved, the inclusion of additional agreements within the Foreign Postal Operators 1 product, including an existing Norway Post Agreement concerning rates for inbound Air Parcels, which is scheduled to expire March 31, 2014.<sup>3</sup> *Id.* at 2.

*Instant docket.* In Order No. 2019, the Commission provided notice of the Postal Service's filing in this docket and took related administrative steps.<sup>4</sup> The 2014 Agreement is a successor to the existing Norway Post Agreement and, like its predecessor, concerns rates for inbound Air Parcels. *Id.* at 3. The 2014 Agreement is intended to take effect April 1, 2014, with existing rates remaining in effect indefinitely until amended or terminated pursuant to contractual terms. *Id.*

## III. THE POSTAL SERVICE'S POSITION

The Postal Service identifies the existing Norway Post Agreement as the baseline for the functional equivalency comparison, and cites several reasons to support the conclusion that the agreements are functionally equivalent. *Id.* at 4. One is

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<sup>2</sup> See Docket Nos. MC2010-34 and CP2010-95, Order Adding Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 to the Competitive Product List and Approving Included Agreement, September 29, 2010 (Order No. 546). See also Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Inbound Competitive Multi-Service Agreements with Foreign Postal Operators (Governors' Decision No.10-3), August 6, 2010.

<sup>3</sup> See Docket No. CP2011-69, Order No. 840, Order Concerning an Additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement, September 7, 2011 (providing for inclusion of the Norway Post Agreement), and Docket No. CP2012-60, Order Approving Addition of Modified Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement (Norway Post), September 28, 2012 (Order No. 1487) (resulting in an 18-month extension of the Norway Post Agreement). (In this Order, the Norway Post Agreement, as modified by Order No. 1487, is referred to as the "existing Norway Post Agreement" or the "baseline agreement".)

<sup>4</sup> Notice and Order Concerning Additional Modification of Inbound Competitive Multi-Service Agreement with Norway Post, March 14, 2014 (Order No. 2019).

that the inbound service offered through the 2014 Agreement (inbound Air Parcels) fits within the Mail Classification Schedule language for the Foreign Postal Operators 1 product, and therefore the existing Norway Agreement and the 2014 Agreement conform to a common description. *Id.* Another is that the postal services offered under the 2014 Agreement share cost characteristics with those offered in the existing Norway Post Agreement. *Id.* In addition, the Postal Service states that in both the existing Norway Post Agreement and the 2014 Agreement, the general terms and conditions of exchange, which are drivers of the costs, are spelled out through the E-Parcels Group agreement and its sub-agreements. *Id.* The Postal Service further states that with a few minor adjustments that do not affect cost characteristics, the financial models used to generate the rates offered for inbound Air Parcels are the same. *Id.* It asserts that the adjustments, such as the expression of costs in different currencies, are inconsequential to the Commission's analysis of functional equivalence. *Id.* The Postal Service therefore asserts that the 2014 Agreement has not only similar, but the same cost characteristics as the existing Norway Post Agreement. *Id.*

The Postal Service states that the difference between the existing Norway Post Agreement and the 2014 Agreement is that the latter provides for an indefinite term, to continue until amended or terminated, while the existing Norway Post Agreement initially had a two-year term, later extended by eighteen months. *Id.* at 5. The Postal Service asserts that this difference does not affect either the cost or market characteristics of the postal services being offered or the fundamental nature of the agreements, and that nothing detracts from the conclusion that the 2014 Agreement is functionally equivalent to the existing Norway Post Agreement. *Id.*

#### IV. COMMENTS

The Public Representative filed comments on March 21, 2014.<sup>5</sup> No other comments were received. The Public Representative states that he has reviewed the 2014 Agreement and the supporting financial model filed under seal, and concludes that the 2014 Agreement is functionally equivalent to the existing Norway Post Agreement. PR Comments at 3. He also concludes that the negotiated inbound rates in the 2014 Agreement are likely to generate sufficient revenue to cover its attributable costs at least in its initial year. *Id.*

The Public Representative states that the most important difference between the existing Norway Post Agreement and the 2014 Agreement concerns the term, as the 2014 Agreement does not establish a contract term with an ending date certain. *Id.* He states that he agrees with the Postal Service's conclusion that the specified differences between the agreements do not alter the conclusion the 2014 Agreement is functionally equivalent to the baseline agreement. *Id.* at 3-4.

Finally, the Public Representative states that assuming the 2014 Agreement is not terminated, it is not clear whether the Postal Service is excused from filing a notice pursuant to 39 C.F.R. § 3015.5 if new rates are negotiated. *Id.* at 4. He therefore states the Commission should request an explanation from the Postal Service about its plans to provide notice of such a rate change. *Id.*

#### V. COMMISSION ANALYSIS

The Commission's responsibility with respect to an agreement of this type is to ensure that the 2014 Agreement is functionally equivalent to the baseline agreement and satisfies the requirements of 39 C.F.R. §§ 3015.5 and 3015.7 and 39 U.S.C. § 3633.

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<sup>5</sup> Public Representative Comments on Postal Service Notice Concerning Additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement (Norway Post), March 21, 2014 (PR Comments).

*Functional equivalence.* The Commission has reviewed the Postal Service's reasons for asserting that the 2014 Agreement shares similar cost and market characteristics with the baseline agreement; meets the pricing formula and falls within the classification established in the Governors' Decision authorizing this product; and comports with 39 U.S.C. § 3633 and related Commission rules. It also has considered the Public Representative's comments. The Commission concludes that the 2014 Agreement is substantially similar to the baseline agreement and that the difference between them does not fundamentally alter either the service the Postal Service will provide under the 2014 Agreement or the structure of the 2014 Agreement. The Commission therefore finds that the 2014 Agreement may be included within the Foreign Postal Operators 1 product.

The existence of an indefinite term at current rates does not alter this finding. This conclusion is consistent with Order No. 1761, where the question of an indefinite term for an international negotiated service agreement within the competitive Foreign Postal Operators 1 product in Docket No. CP2013-65 and a baseline agreement with a fixed term was first decided.<sup>6</sup> The Commission concluded that given the limited number of contracts in this product and a pricing structure that continued to conform to the requirements of 39 U.S.C. § 3633(a), the indefinite term did not preclude the agreement under consideration from being included within the Foreign Postal Operators 1 product. As the circumstances in this docket are the same, the Commission finds that an indefinite term does not preclude the 2014 Agreement from being included within the Foreign Postal Operators 1 product.<sup>7</sup>

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<sup>6</sup> Docket No. CP2013-65, Order Approving Addition of Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement (with Deutsche Post), June 26, 2013 (Order No. 1761).

<sup>7</sup> The Commission also has included other international NSAs with indefinite terms within other products. See, e.g., Docket No. CP2013-49, Order No. 1669, Order Approving an Additional Global Reseller Expedited Package Contracts 1 Negotiated Service Agreement, February 26, 2013; Docket No. CP2012-21, Order No. 1337, Order Approving an Additional Global Reseller Expedited Package Contract Negotiated Service Agreement, May 9, 2012.

*Cost considerations.* The Commission reviews competitive products to ensure they meet the applicable requirements of 39 U.S.C. § 3633 and 39 C.F.R. §§ 3015.5 and 3015.7. The Commission has reviewed the Postal Service's filing, including supporting financial analyses provided under seal, and the Public Representative's comments. Based on this review, the Commission finds that the 2014 Agreement should cover its attributable costs. 39 U.S.C. § 3633(a)(2). Additionally, the Commission finds that the 2014 Agreement should not result in competitive products being subsidized by market dominant products, satisfying the requirements of 39 U.S.C. § 3633(a)(1). It also finds the 2014 Agreement should have a positive effect on the contribution of competitive products to institutional costs, in furtherance of 39 U.S.C. § 3633(a)(3). Accordingly, a preliminary review of the 2014 Agreement indicates it is consistent with the section 3633(a) provisions applicable to rates for competitive products.

*Future rate changes.* The Public Representative expresses concern that the indefinite term may be viewed as excusing the Postal Service from filing with the Commission a notice of price change under the 2014 Agreement. PR Comments at 4. The existence of an indefinite term does not obviate the need for the Postal Service to file a notice of price change under Commission rules. Accordingly, the Postal Service shall file a notice of any price change under the 2014 Agreement in accordance with the requirements of 39 C.F.R. § 3015.5.

*Other considerations.* The Postal Service states that the intended effective date of the 2014 Agreement is April 1, 2014. Notice at 3. The Postal Service shall promptly notify the Commission if the actual effective date differs from the intended effective date. The 2014 Agreement is for an indefinite term, so it has no specific termination date. The Postal Service shall promptly notify the Commission when the 2014 Agreement terminates. In addition, within 30 days of termination, the Postal Service shall file costs, volumes, and revenues data associated with the 2014 Agreement.

*Conclusion.* The Commission finds that the 2014 Agreement filed in Docket No. CP2014-35 is appropriately included within the Foreign Postal Operators 1 product.

## VI. ORDERING PARAGRAPHS

*It is ordered:*

1. The Commission approves the inclusion of the 2014 Agreement filed in Docket No. CP2014-35 within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 (MC2010-34) product. A related revision to the Mail Classification Schedule appears in the attachment to this Order and takes effect upon issuance of this Order.
2. The Postal Service shall promptly notify the Commission if the effective date of the 2014 Agreement differs from the intended effective date identified in the Notice.
3. The Postal Service shall promptly notify the Commission of any price change as directed in the body of this Order.
4. The Postal Service shall promptly notify the Commission of the date of termination if the 2014 Agreement is terminated by either party.
5. Within 30 days of the termination of the 2014 Agreement, the Postal Service shall file costs, volumes, and revenues data associated with the 2014 Agreement.

By the Commission.

Ruth Ann Abrams  
Acting Secretary

## CHANGES TO MAIL CLASSIFICATION SCHEDULE

The following material represents a change to the Mail Classification Schedule. The Commission uses two main conventions when making changes to the product list. New text is underlined. Deleted text is struck through.

### PART B COMPETITIVE PRODUCTS

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#### 2500 Negotiated Service Agreements

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#### 2515 Inbound International

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2515.10 Inbound Competitive Multi-Service Agreements with Foreign Postal Operators

2515.10.5 Products Included in Group (Agreements)

Each product is followed by a list of agreements included within that product.

- Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1  
*Baseline Reference*

Docket Nos. MC2010-34 and CP2010-95

PRC Order No. 546, September 29, 2010

*Included Agreements*

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Posten Norge AS (Norway Post), ~~CP2011-69, extended by~~  
~~CP2012-60, CP2014-35, expires March 31, 2014~~TBD

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